

STATE OF NEW YORK

7079

2021-2022 Regular Sessions

IN SENATE

May 27, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the private housing finance law, in relation to authorizing additional supervision and regulation of limited-profit housing companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 32-a of the private housing finance law, as added
2 by chapter 449 of the laws of 1975, subdivision 6 as added by chapter
3 744 of the laws of 1977, subdivision 7 as added by chapter 409 of the
4 laws of 1982, subdivision 8 as added by chapter 594 of the laws of 2019
5 and the closing paragraph as added by chapter 74 of the laws of 1988, is
6 amended to read as follows:

7 § 32-a. Additional supervision and regulation. The commissioner or the
8 supervising agency, as the case may be, shall:

9 1. Promulgate regulations providing for recognition of duly consti-
10 tuted tenants' associations and cooperators' advisory councils by the
11 commissioner or supervising agency, as the case may be, and providing
12 that a housing company shall meet on a regular basis with represen-
13 tatives of such an association or council at the specific project
14 involved to discuss matters relating to the project. A duly constituted
15 cooperators' advisory council shall only be such a council in a mutual
16 company project prior to the election of a board of directors by the
17 tenant-cooperators.

18 2. Require every company to file with him, her or it an annual operat-
19 ing budget for each individual project in the manner prescribed by the
20 commissioner or supervising agency.

21 3. Require every company to file with him, her or it semi-annual or
22 quarterly financial statements and an annual financial statement. Each
23 annual financial statement shall be accompanied by a certificate of the

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 company's independent certified public accountant. Such financial state-
2 ments shall be filed at the times and in the manner prescribed by the
3 commissioner or supervising agency.

4 4. Afford tenants access to and an opportunity to acquire copies of
5 all operating budgets or financial statements respecting the project in
6 which such tenants reside, to the extent that such budgets and state-
7 ments are required by law to be kept by the commissioner or supervising
8 agency.

9 5. Permit any tenant, duly constituted tenants' association, duly
10 constituted cooperators' advisory council or his, hers or its duly
11 authorized representative to audit the books of the company and to have
12 access during normal business hours to the financial records upon which
13 the company's financial statements are based.

14 6. Promulgate regulations relating to managing agents, including
15 criteria for the eligibility for selection and the compensation of
16 managing agents by companies organized pursuant to this article. Such
17 regulations shall provide, among other things, that any contract with a
18 managing agent entered into after September first, nineteen hundred
19 seventy-seven shall be terminable for cause and shall be terminable,
20 with or without cause, at least every twelve months after commencement
21 of the term thereof, and that promptly upon termination the managing
22 agent shall turn over to the company all project records, rent rolls,
23 bills, cancelled checks, bank statements and other papers owned by such
24 company.

25 7. Require that every company file with him, her or it, within six
26 months of the effective date of regulations implementing this subdivi-
27 sion and in such format as shall be prescribed by the commissioner or
28 the supervising agency after consultation with the state energy office,
29 an energy audit report which identifies potential energy-saving building
30 improvements, including alterations, modifications and adjustments to
31 the building structure, heating, cooling, lighting and ventilation
32 systems; their relative costs; potential energy and cost savings; and
33 simple payback periods, which for the purpose of this subdivision shall
34 mean that period of time within which the estimated cost of such
35 improvements, exclusive of the cost of capital, would be recovered from
36 the savings generated by reduced energy consumption resulting from the
37 improvements. The energy audit shall be conducted by a public utility,
38 an engineer or architect licensed by the state, or the managing agent or
39 other representative of the company if such individual has attended an
40 energy audit training workshop sponsored by the commissioner or the
41 state energy office. A copy of the energy audit report, required herein,
42 shall be given to any duly constituted tenant's association or
43 cooperator's advisory council and a copy shall be available for
44 inspection and copying by any individual tenant who requests it. The
45 commissioner or supervising agency shall also require that every company
46 certify by March thirty-first, nineteen hundred eighty-four that all
47 compatible conservation measures identified in the energy audit report
48 which have simple payback periods of one year or less have been imple-
49 mented; provided, however, if the commissioner or supervising agency
50 determines within sixty days of the date the energy audit report is
51 filed that one or more of such identified conservation measures cannot
52 be implemented by March thirty-first, nineteen hundred eighty-four,
53 given the projected rent revenues and other monies available to the
54 company from reserve funds, loans or grants from the state or federal
55 government or any other source, the implementation of such conservation

1 measures shall be provided for according to a schedule prescribed by the
2 commissioner or supervising agency.

3 8. Every tenant or resident, or a person acting on behalf of a tenant
4 or resident, shall be permitted to copy, by photographic means, any
5 document within the scope of this section pertaining to the project in
6 which such tenant or resident resides. A reasonable fee, subject to a
7 maximum therefor prescribed in regulations, may be charged for such
8 copies.

9 9. Require that within ten days of the filing of any reports or finan-
10 cial statements with the commissioner or supervising agency, the housing
11 company shall transmit a copy of said report or financial statement to a
12 duly constituted resident board of directors, and if there be none, to a
13 cooperator's advisory council or a duly constituted tenants association
14 representing the project concerned. Where no such council or association
15 exists in a project, a notice shall be posted informing the residents of
16 the location on the premises of the project where a copy of said report
17 or financial statement is available for inspection. The notice shall be
18 posted within ten days of filing, in a prominent place on the premises
19 of the project concerned.

20 10. Require every voting member of a board of directors of a company
21 subject to the provisions of this article, elected or appointed for a
22 term beginning on or after the effective date of this subdivision, to
23 complete, within the first year of his or her term and at least once
24 every three years thereafter, a minimum of two hours of training, in
25 person or virtually, as the commissioner or supervising agency, as the
26 case may be, may deem appropriate on the financial oversight, account-
27 ability and fiduciary responsibilities of a board member; and to require
28 every voting member of a board of directors of a company subject to the
29 provisions of this article, elected or appointed for a term beginning
30 before the effective date of this subdivision, to complete such training
31 within one year of the effective date of this subdivision and at least
32 once every three years thereafter.

33 11. Require every voting member of a board of directors of a company
34 subject to the provisions of this article, elected or appointed for a
35 term beginning on or after the effective date of this subdivision, to
36 complete, within the first year of his or her term and at least once
37 every three years thereafter, in addition to the training required by
38 subdivision ten of this section, a training course, in person or virtu-
39 ally, as the commissioner or supervising agency, as the case be, may
40 deem appropriate, to acquaint him or her with the powers, functions and
41 duties of a board of directors of a company subject to the provisions of
42 this article, as well as the powers and duties of other governing and
43 administrative authorities affecting such companies; and to require
44 every voting member of a board of directors of a company subject to the
45 provisions of this article, elected or appointed for a term beginning
46 before the effective date of this subdivision, to complete such training
47 within one year of the effective date of this subdivision and at least
48 once every three years thereafter.

49 12. Require each member of a board of directors of a company subject
50 to the provisions of this article to demonstrate compliance with the
51 requirements set forth in subdivisions ten and eleven of this section by
52 filing a certificate of completion of such course or courses on a form
53 to be promulgated by the commissioner. Such form shall be filed with the
54 secretary of the housing corporation and maintained by the secretary as
55 a corporate record and distributed annually to the shareholders and upon
56 the filing of any director with the company of the intention to seek

1 re-election to the position. Sixty days prior to any scheduled election
2 of members of the board of directors, the secretary of the housing
3 company shall furnish the commissioner or the supervising authority, as
4 the case may be, with a list of all incumbent directors indicating which
5 individuals have submitted certificates required in this subdivision.
6 Such course or courses shall be provided by the commissioner or super-
7 vising agency, as the case may be, at no cost to the trainee or the
8 board to which the trainee has been elected.

9 13. Develop the curricula used for training required by subdivisions
10 ten and eleven of this section for which the supervising agency or the
11 commissioner may request and shall receive the cooperation and assist-
12 ance from any departments, divisions, boards, bureaus, commissions or
13 agencies of the state and political subdivisions thereof in developing
14 such curricula. These curricula may be offered together as a single
15 course or separately. The training required by this section may be
16 offered by providers approved by the commissioner or supervising agency,
17 as the case may be. In approving other providers for these trainings,
18 the commissioner or supervising agency shall consider a potential
19 provider's understanding of cooperative homeownership; laws, rules and
20 regulations affecting companies subject to the provisions of this arti-
21 cle; and the fiduciary responsibilities of the board of a residential
22 cooperative, as well as the experience of the provider in delivering
23 such training.

24 14. Hold such meeting or meetings, in person or virtually as the
25 commissioner or supervisory agency shall deem appropriate, with the
26 board of a company on the financial oversight, accountability and fidu-
27 ciary responsibilities of such board; the powers, functions and duties
28 of such board; and the powers and duties of other governing and adminis-
29 trative authorities affecting such company.

30 § 2. This act shall take effect immediately.